

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
ISSUED BY THE CITY OF SEATTLE
TO THE CITY OF SEATTLE, PARKS
DEPARTMENT,

BAYVIEW CONDOMINIUM HOMEOWNERS
ASSOCIATION,

Appellant,

v.

THE CITY OF SEATTLE,

Respondent.

SHB NO. 87-29

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT

THIS MATTER, the City's Motion for Summary Judgment of Dismissal, or in the alternative a Motion for a Partial Summary Judgment dismissing all issues except those relating to the location and height of the proposed building, came on for hearing before the Shorelines Hearings Board on August 26, 1987 in Seattle, Washington. Seated for and as the Board were Lawrence J. Faulk, (Presiding), Wick Dufford, (Chairman), Judith A. Bendor, Nancy Burnett, Dick Gidley and Les Eldridge, Members.

1 The moving party, respondent The City of Seattle, was represented
2 by Gordon F. Crandall, Sr. Assistant City Attorney. Appellant Bayview
3 Condominium Homeowners Association ("Bayview") was represented by J.
4 Richard Aramburu, Attorney at Law. Affidavits and exhibits were
5 submitted. Appellant was given at least ten days to respond to all
6 submissions of the city. The Board considered:

- 7 1. Request for Review, with decision of DCLU
8 attached
- 9 2. Motion for Summary Judgment
- 10 3. Affidavit of Kevin Stoops with attached
11 exhibits:
 - 12 a) Seacrest Park Master Plan
 - 13 b) Decision of DCLU
 - 14 c) Stoops memo of 6/18/87
 - 15 d) Determination of nonsignificance
 - 16 e) Environmental checklist
 - 17 f) Kranz memo of 11/24/86
- 18 4. Affidavit of Bruce Dees with photographs
19 attached
- 20 5. Affidavit of Jim Barnes with attached
21 exhibits:
 - 22 a) Zoning map
 - 23 b) Seacrest Park Master Plan
 - 24 c) Seacrest Park Site Plan
- 25 6. Affidavit of Charles F. Reasy
- 26 7. Affidavit of Colin H. Daley, with 11
27 photographs attached
8. Briefs of opposing parties

20 From the foregoing documents and the argument of counsel, the
21 Board determines that the following facts are not disputed:

UNDISPUTED FACTS

I

The subject area is 1,800 feet of shoreline on Elliott Bay in Seattle, between Don Armeni Park on the north and to and including Fairmount Avenue Southwest on the south. The shoreline is presently undeveloped except for a temporary boathouse facility at 1660 Harbor Avenue Southwest, which includes a pier and aqua-culture fish pens.

II

The shoreline is designated Conservancy Management (CM) in the City of Seattle Shoreline Master Program.

III

The subject area is owned by The City of Seattle, Department of Parks and Recreation, which proposes to develop the area as a park. Improvements include a boathouse (as shown on the Seacrest Park Site Plan), a fenced boat yard (about 3,000 square feet), a fishing pier (one new and one an extension of an existing pier), transient moorage, landscaped open areas with paths, extensive shoreline restoration and an accessory parking lot. The existing fish pens will be moved to a new location.

The boathouse will house public restrooms, bait and tackle sales, a lobby and retail area, a small coffee shop, a storage and office space, and a repair area for kicker boats. An open breezeway separates the restrooms from the main portion of the building.

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2 IV

3 The boathouse will be 20 feet in height, with a cupola rising to a
4 height of 26 feet above finished grade. The boathouse as approved, is
5 to be located as shown in the Seacrest Park Site Plan across Harbor
6 Avenue Southwest from the Bayview Condominium. On the plan the
7 boathouse is placed so that the building occupies 105 feet along the
8 shoreline, with another eight feet taken up by roof overhangs. A
9 parking lot for about 36 cars will be accessory and adjacent to the
10 boathouse.

11 V

12 The Bayview Condominium is a four-story nine-unit residential
13 building at 1625 Harbor Avenue Southwest with residential condominiums
14 on the 2nd, 3rd and 4th floors. The proposed boathouse will occupy
15 some portion of the views from the residential condominiums. Parking
16 is provided on the ground floor.

17 VI

18 The shoreline restoration involves rip rap revetment, removal of
19 rubble, regrading for a flatter slope and natural beach protection
20 (dune grass plantings, rock promontories or drift sills). Two small
21 coves would be filled. About 6,000 cubic yards of rock and 10,000
22 cubic yards of sand and gravel will be used. In addition, 10,000
23 cubic yards of fill soil, including top soil, will be used. There
24 will be no net loss of intertidal area.

VII

A Determination of Nonsignificance (DNS) for the project was filed by the Department of Parks and Recreation on March 20, 1987.

VIII

The Seattle Shoreline Master Program provides that the purpose of the CM environment is to protect areas for environmentally-related, usually public purposes (e.g., parks) with activities having minimal adverse impacts. Facilities are to be water-dependent and designed to maintain the quality of the natural elements of the site. Seattle Municipal Code 24.60.335.

IX

The bulk limitations in this CM location are: 35% view corridor, maximum 35% lot coverage, 35 foot maximum height on land, 15 foot maximum height over water. SMC 24.60.395, Table I.

X

Marine sales, open wet moorage, pedestrian paths, viewpoints, public recreation piers, shoreline protective structures, public parks and community facilities are permitted uses in the CM environment on waterfront lots. SMC 24.60.420.

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XI

Open dry boat storage, accessory parking, landfill on wetlands exceeding 500 cubic yards, piling, natural beach protection and aquaculture are permitted in the CM environment as special uses, i.e., uses which must satisfy the additional conditions of SMC 24.60.525H.

XII

The Director of Construcion and Land Use granted a substantial development permit for the proposed Seacrest Park development on June 24, 1987, subject to the following conditions:

1. Submission of a landscape plan for the parking area prior to issuance of master use permit;
2. Obtaining right from City Council to develop Fairmount Avenue Southwest right-of-way;
3. Limiting construction to 7:30 a.m. to 6:00 p.m. on non-holiday weekdays, except for two low-tide Saturdays;
4. Shielding illumination to contain lighting on site;
5. Providing landscaping within six months of occupancy and permanent maintenance of landscaping.

XIII

On July 24, 1987, the appellants filed their appeal with the Board contending that the permit is inadequate and insufficient because it does not provide sufficient detail; that the boathouse should not be located directly adjacent to several residential developments; that the height and configuration of the boathouse is inappropriate considering adjoining uses; and that the project should be denied or

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III

The Shorelines Hearings Board in review of a substantial development permit must consider the permit as filed and does not review proposed changes in its terms make later. Hayes v. Yount,, 87 Wn. 2d 280, 552 P.2d 1038 (1976). Additionally, the terms of approval must be clear and in sufficient detail for the Board to determine its consistency with the Shorelines Management Act and relevant master program. Hayes, at 295, 296.

Here we were given a detailed site plan and a master plan for the park as well as an extensive analysis and decision by the Director of the City's Department of Construction and Land Use. We have not attempted to evaluate any changes to the terms of approval which might eventuate.

As a matter of law, we conclude that the permit as approved is sufficiently detailed for us to carry out our statutory review function.

IV

In a Summary Judgment proceeding, once a moving party makes an initial showing on a factual matter, the nonmoving party must demonstrate the existence of an issue by setting forth specific facts which go beyond mere unsupported allegations. Tokarz v. Frontier Federal Savings and Loan Assoc., 33 Wn. App. 456, 656 P.2d 1089 (1982). Here, appellant has by controverting affidavit placed in

1 conditioned under SEPA authority to mitigate adverse environmental
2 impacts.

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4 XIV

5 The city has apparently made some proposals for alternate location
6 and positioning of the proposed boathouse. Such proposals could be
7 the subject of subsequent preceedings to modify the present permit.
8 The permit, as issued, however, does not encompass any such,
9 as-yet-unissued, modification and our review upon the instant motion
10 is limited to consideration of the boathouse as located and positioned
11 on the Seacrest Park Site Plan and Seacrest Park Master Plan which
12 were part of the permit application. The dimensions there shown are
13 likewise the dimensions we consider here.

14 From these Findings of Fact, the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 The Board has jurisdiction over these persons and this matter.
18 RCW 90.58.180 and Ch. 461-08 WAC.

19 II

20 A party who seeks summary judgment upon all or part of the appeal
21 is entitled to the same on those issues about which there is no
22 genuine issue as to any material fact, and upon which the moving party
23 is entitled to a favorable decision as a matter of law. CR 56.

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2 issue only the location, positioning and dimensions of the proposed
3 boathouse - these matters pertaining to a dispute over the impact of
4 the proposed boathouse on residential views.

5 Accordingly as to all aspects of the project other than the
6 boathouse (i.e., the fenced boat yard, the fishing pier, the transient
7 moorage, landscaped open areas with paths, shoreline restoration and
8 the parking lot) we hold that there is no genuine issue as to any
9 material fact.

10 V

11 The Board concludes that, excluding the boathouse, the development
12 as proposed by the city is consistent with the Seattle Shoreline
13 Master Program and the provisions of chapter 90.58 RCW. RCW
14 90.58.140(2)(b). Additionally, the Board concludes, based on the
15 uncontroverted facts, that the features of the project other than the
16 boathouse are not likely to have a probable significant adverse
17 environmental impact, requiring the imposition of conditions to
18 ameliorate. Therefore, the project minus the boathouse is consistent
19 with the State Environmental Policy Act (SEPA).

20 Accordingly we hold that the City is entitled to judgment as a
21 matter of law on all project components excluding the boathouse.

22 VI

23 The impact on views of the boathouse, as approved, presents a
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1 disputed issue of material fact. Summary judgment is, therefore,
2 denied on this issue.

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4 VII

5 The matter still at issue raises questions to be resolved under
6 both the Shoreline Management Act and SEPA.

7 VIII

8 We recognize that the other components of this project may all, to
9 some degree, be accessory to the boathouse. Thus, the ultimate
10 outcome concerning the boathouse might necessitate the relocation of
11 project features built in advance. If the city chooses to proceed on
12 other aspects of the project, which they are free to do under this
13 decision, they do so at their own risk.

14 IX

15 Any Finding of Fact which should be deemed a Conclusion of Law is
16 hereby adopted as such.

17 From these Conclusions, the Board enters this
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ORDER

The shoreline substantial development granted by The City of Seattle to the Department of Parks and Recreation of The City of Seattle for Seacrest Park is affirmed EXCEPT as to the dimensions, location, and positioning of the proposed boathouse. Work may commence on any aspect of the project other than the boathouse. The latter shall be subject to review by the Board in the ordinary course of a shoreline substantial development permit appeal.

DONE at Lacey, Washington, this 25th day of September, 1987.

SHORELINES HEARINGS BOARD

 9/25/87
LAWRENCE J. FAULK, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member


NANCY BURNETT, Member


DICK GIDLEY, Member


LES ELDRIDGE, Member

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